

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

ERIC MENDEZ, : Civil Action No. 05-1716 (NLH)  
: :  
Plaintiff, : :  
: :  
v. : **OPINION**  
: :  
UNITED STATES OF AMERICA, : :  
: :  
Defendant. : :

**APPEARANCES:**

Eric Mendez  
355 E. 143 St. #8E  
Bronx, NY 10454  
*Pro se*

Dorothy J. Donnelly, Esquire  
United States Attorney's Office  
402 East State Street  
Room 430  
Trenton, NJ 08608  
*Attorney for Defendant*

**HILLMAN**, District Judge

This matter has come before the Court on Defendant's motion for the Court to reconsider its Order denying Defendant's motion to dismiss Plaintiff's Complaint for lack of subject matter jurisdiction. For the reasons expressed below, Defendant's motion will be granted.

Plaintiff, Eric Mendez, was an inmate at FCI Fort Dix. In his Complaint, Plaintiff claims that when he was released from a week-long stay in the Segregated Housing Unit (SHU), Bureau of Prison (BOP) officers returned only one of four bags containing his personal belongings that he checked-in prior to being admitted into SHU. Plaintiff complied with the Federal Tort

Claims Act (FTCA) by filing a notice of claim for the loss of his property. Defendant denied his claim. Plaintiff then filed his Complaint, *pro se*, with this Court. His claim is for \$465.55.

Defendant filed a motion to dismiss Plaintiff's Complaint for lack of subject matter jurisdiction pursuant to Federal Civil Procedure Rule 12(b)(1), or in the alternative, a motion for summary judgment, claiming that a provision of the FTCA exempts it from the waiver of sovereign immunity. The Court denied Defendant's motion. Recognizing that the Third Circuit had not addressed the issue, the Court followed the Fourth Circuit, which held that the FTCA does not exempt the BOP from immunity. Defendant asked the Court to reconsider the denial of its motion pursuant to Local Rule 7.1(g), and the Court continued that motion pending the Supreme Court's resolution of the circuit split on the issue.

In a 5-4 decision, the Supreme Court has now resolved the circuit split, and has held that a BOP officer who is accused of losing an inmate's property is immune from liability under the FTCA. Ali v. Federal Bureau of Prisons, 128 S. Ct. 831, 840-41 (2008). Consequently, Defendant's motion for reconsideration must be granted, and Plaintiff's complaint must be dismissed. An appropriate Order will be entered.

Dated: March 20, 2008

At Camden, New Jersey

s/ Noel L. Hillman

NOEL L. HILLMAN, U.S.D.J.